

MINUTES

INSOLVENCY LAW COMMITTEE OF THE BUSINESS LAW SECTION OF THE STATE BAR OF CALIFORNIA

July 23, 2004

The regularly scheduled meeting of the Insolvency Law Committee of the Business Law Section of the State Bar of California was held on July 23, 2004, at the offices of Orrick, Herrington & Sutcliffe, LLP in Sacramento, California and by video conference at Reed, Smith, Crosby, Heafey in Los Angeles, California.

The following members attended the meeting in person, by video conference or by telephone:

Geraldine Valdez
Peter Bronson
Paul Pascuzzi
Molly Baier
Mike Buckley
Elizabeth Berke-Dreyfuss
Lynn Ernce
Lisa Fenning
Bob Franklin
Eve Karasik
Michael Koch
Howard Kollitz
Greg Lunt
Donna Parkinson
Mark Porter
Dan Schechter
Cliff Stevens
Russell Clementson (Ex Officio)
Sandy Lavigna (Ex Officio)
Rob Harris (Ex Com Liaison)

The following members did not attend the meeting: David Bertenthal, Brian Davidoff, Radmila Fulton, Judy Gibbs, Tracy Schweitzer, David Shemano, and Colin Wied.

Geraldine Valdez called the meeting to order at approximately 10:00 a.m.

1. Approval of Minutes: June 25, 2004.

The minutes of the June 25, 2004 meeting were approved without incident.

2. Membership.

The Committee approved Mark Porter as Secretary for next year. Congratulations to Mark. The Committee continued its discussions and consideration of new applicants for the

remaining vacant positions on the Committee for next year in terms of qualifications and diversity in geography, gender, and practice area, among other things. The Committee voted to approve the applications of Mary Jo Wiggins, Barry Glaser, and Craig Wolfe.

3. Meeting Schedule.

No change in the meeting schedule for the balance of the year.

4. Budget.

Nothing to report at this meeting.

5. Subcommittee – Assignments.

Appointments to subcommittees and subcommittee chairs were tabled for further discussion at later meetings with the new members. New chairs for the Legislation and Education Subcommittees will be needed because the current chairs' terms expire. Molly Baier requested to be moved to the Legislation Subcommittee.

6. Programs and Education Subcommittee Report.

A. October 2004 Annual Meeting.

Geraldine reported on the status of the Committee's two programs at the October 2004 Annual Meeting. Mark Porter is in charge of a program on asset sales entitled "Practical Help for Business Lawyers: A Primer on Bankruptcy Asset Sales" which will be held Friday, October 8, 2:15 p.m. to 4:15 p.m. Mark is still looking for a judge for his panel. Russell Clementson, Sandy Lavigna and Donna Parkinson are in charge of the program on bankruptcy fraud entitled "Bankruptcy Fraud after Enron: Filing Bankruptcy Without Going to Jail" which will be held Thursday, October 7, 2:15 p.m. to 4:15 p.m. The deadline for written materials for these programs is August 10, 2004.

C. Reimbursement for Speakers Dispute.

Rob Harris reported that speaker reimbursement from the Committee budget is not allowed as the policy is that speakers do not receive reimbursement absent special circumstances and prior approval. The Committee noted that this policy could affect the ability to attract quality speakers for programs. Rob and Geraldine will discuss this issue further with Peter Szurley from the Executive Committee and report at the next meeting.

7. Progress Reports on Current Projects from Legislation Subcommittee.

A. New ALP re Attachment Liens.

Previously, Dan Schechter circulated a memo discussing the problem of an attachment lien not being the basis for a secured claim in a bankruptcy case until the creditor obtains a judgment, as the Ninth Circuit held in *In re Southern California Plastics, Inc.*, 165 F.3d 1243 (9th Cir. 1999). Dan's memo suggests that California statutory law should be amended to provide that an order allowing the attaching creditor's claim in a bankruptcy proceeding is equivalent to a "judgment," solely for purposes of perfection of a California attachment lien.

The Committee considered the issue and agreed that it is a good project for an ALP. Molly Baier volunteered to assist Dan with the ALP and Rob Harris volunteered to assist with the process of obtaining approvals.

B. New Projects.

i. Model Real Estate Order and Findings. Geraldine Valdez is in the process of reviewing the revised order and findings with the title company attorneys at her firm. In the meantime, the revised order and findings will be posted on the website. Rob Harris will inquire whether the Executive Committee needs to approve the revised order and findings.

ii. CCP §§ 697.530 and 708.110 et seq. Peter Bronson continues to work with the UCC Committee to identify the issues and solutions to the problems with the statutes and/or educating the bar about these provisions.

iii. H.R. 975 (Bankruptcy Reform Act). Nothing new to report. The bill is not dead, but it is not moving either.

8. Legislation Subcommittee's New Bill Report.

A. State Bills.

Greg Lunt reported that generally there was nothing new to report.

B. CLRC.

With regard to the California Law Review Commission survey on the uses of the assignment for benefit of creditor provisions, Mark Porter reported that the survey is ready to be distributed by list serve. A draft email is being circulated for approval. Mike Koch had nothing new to report regarding the CLRC memo discussing proposed revisions to the mechanics lien law. Mike will continue to monitor the project and report to the Committee.

C. Federal Bills.

Regarding the proposed revisions to avoidance law in SB 1970 and SB 832, Mark Porter has asked Tim Sparks, a lawyer who has experience in executive compensation, to review the memo prepared by Mark and Paul Pascuzzi. Greg Lunt reported no further change in status on HR 2120, SB 1264 and SB 1331.

D. State Bulk Sales Laws.

At the February meeting, the Committee voted to join in the UCC Committee's report recommending the repeal of the bulk sales laws. Geraldine Valdez will follow up on the status and the best manner in which to indicate the ILC's support for the UCC Committee's report.

9. Website Report and Constituency Outreach Project and Report from Constituency/Outreach/Website Subcommittee.

Bob Franklin reported for the website, et al. subcommittee. Bob reported that the prior report that the website is up to date with all changes that have been requested was erroneous.

Bob has worked with Mike Mullen to correct this and the website is now up to date. The Committee is continuing its ongoing efforts to solicit emails for e-blast lists. Liz Berke-Dreyfuss reported on her inquiries about tele-seminars. The Bar is set up to videotape seminars and make them available on the website or attendance at seminars by phone. The Bar does not have streaming video of a live seminar available at this time. The cost to videotape a seminar is \$1,200 for a half day and \$2,400 for a full day. This is much cheaper than a private company streaming video setup. The Committee discussed the benefits of having the ability to view a seminar on one's own time, through the videotaping of seminars, rather than having to attend a live streaming video. For a tele-seminar, Liz reported that the Bar needs three months' lead time for setup. Liz will find out if the Bar is videotaping the October seminars and will report at the next meeting.

10. Publications Subcommittee Current Projects Report.

Peter Bronson reported that he completed and submitted the mandatory article for the Business Law News on Secret Liens. Geraldine Valdez is working on an article dealing with the model real estate order and findings. Geraldine will work on the mandatory California Legislative Bulletin Annual Report.

11. Update from Ex-Comm Liaison.

Rob Harris gave the report from the Executive Committee. Rob gave the Committee the opportunity to ask any questions or make any inquiries to the Executive Committee. Rob noted that the Committee should continue its efforts to use the list serves for program notifications and to keep the bar up to date on Committee matters. Rob reported that it appeared that the Committee is on track for completing all of its duties, including the Business Law News article and the Annual Meeting programs. Rob reported that the procedure for an ALP is for all the other Committee chairs to review it before it goes to the Executive Committee. This will affect this Committee's work on the Article 6 project with the UCC Committee and the ALP that Dan Schechter is working on. The Committee should be watching for the CLRC list of legislation comments in March.

12. New Business.

The Committee discussed briefly the House Bankruptcy hearing on professional fees.

13. Adjournment.

The meeting was adjourned at approximately 11:45 a.m.

Respectfully submitted,
Paul J. Pascuzzi